

# BLANKROME

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MEMO ENDORSED

February 15, 2023

**VIA ECF**

The Honorable Lewis A. Kaplan  
United States District Judge  
for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

USDC SDNY  
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Re: *Waite v. UMG Recordings, Inc.*,  
Civil Action No. 1:19-cv-01091-LAK (S.D.N.Y.)

Dear Judge Kaplan:

Plaintiffs-Petitioners Kasim Sulton, Susan Straw Harris p/k/a Syd Straw, Leonard Graves Phillips, Stan Sobol p/k/a Stan Lee, Steve Wynn, Dennis Mehaffey p/k/a Dennis Duck, and David Pellish p/k/a Dave Provost, on behalf of themselves and all others similarly situated (collectively, "Plaintiffs-Petitioners"), by and through its counsel, respectfully request the withdrawal of Plaintiffs' Notice of Interlocutory Appeal (ECF 266) without prejudice.

On February 10, 2023, Plaintiffs-Petitioners filed their Fed. R. Civ. P. 23(f) Petition for Permission to Appeal Order Denying Class Certification in the United States Court of Appeals for the Second Circuit, which was docketed at Appellate Docket No. 23-194. Plaintiffs-Petitioners filed in error the Notice of Interlocutory Appeal (ECF No. 266) in the District Court on February 10, 2023, causing the creation of a duplicative Docket No. 23-195 in the United States Court of Appeals for the Second Circuit. To cure this situation created by the erroneous, premature filing, and to eliminate the second docket, the Clerk's Office of the United States Court of Appeals for the Second Circuit suggested that Plaintiffs-Petitioners withdraw the Notice of Interlocutory Appeal filed in U.S. District Court for the Southern District of New York (ECF No. 266). The withdrawal (without prejudice) will not affect the posture of this action or prejudice any party to this matter.

Counsel for Plaintiffs-Petitioners met-and-conferred with counsel for Defendants who consented to the requested relief. Accordingly, Plaintiffs-Petitioners hereby request the withdrawal of the Notice of Interlocutory Appeal (ECF No. 266) without prejudice to the re-filing of the Notice of Interlocutory Appeal within 14 days after the Court of Appeals grants the Petition.

Respectfully submitted,

/s/ Roy W. Arnold

cc: Counsel of Record

*Roy Arnold*  
2/15/23